

Appl. No. 10/798,460
Atty. Docket No. CM 2731
Amdt. dated 3/16/06
Reply to Office Action of 12/2/05
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 12 are pending in the present application. No additional claims fee is believed to be due.

Claim 1 has been amended to specify that composition comprises "greater than 7% glycerin." Support for this amendment is found on page 3, line 1 of the specification.

Claim 5 has been amended to specify that the amount of natural moisturizing factor is from about 0.1% to about 5.0%. Support for this amendment is found on page 5, line 18-19 of the specification.

Claim 6 has been amended to correct minor grammatical issues, including removing the reference to formula "(I)" and to replace the term "=" with "is."

Rejection Under 35 USC §112, First Paragraph

The Office Action states that the phrase "greater than about 7%" renders Claim 1 vague. Applicants have amended instant Claim 1 to read "greater than 7%." Applicants further have removed the bracketed term "(I)" from Claim 6. Applicants respectfully assert that with these amendments, the rejections are overcome.

Rejection Under 35 USC §103(a) Over Masuda (US 2002/0041889) in view of Oblong et al. (U.S. 6,217,888).

Applicants respectfully traverse the rejection of Claims 1-12 under 35 U.S.C. 103(a), and assert that the claims are non-obvious in light of Masuda and Oblong.

To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to combine the references. Second, there must be a reasonable expectation of success. Third, the references must teach or suggest all claim limitations. *In re Vaeck*, 20 USPQ2d 1438. Applicants assert that for the following reasons, the cited references fail to meet each of these criteria.

The amended instant claims are directed toward a composition comprising greater than 7% by weight of the composition of glycerine; a vitamin B₃ compound, and a natural

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moisturising factor. Applicants believe that high levels of humectant serve to increase the activity levels of the natural moisturizing factors (NMF's). This results in a more compact stratum corneum layer due to a decrease in loose squame sheets and an increase in epidermal barrier function. This in turn would allow increased penetration of both niacinamide and of the NMF's.

The Office Action states that Masuda fails to provide a specific teaching to select a vitamin B3 compound. In addition, Applicants assert that Masuda fails to teach the natural moisturizing compound of the present invention. Masuda teaches compositions comprising alpha-amino acids, specifically naturally occurring alpha-amino acids and their enantiomers and racemates. In contrast, the natural moisturizing factors (NMF's) of the present invention is a mixture comprising amino acids in combination with urea, sodium pyrrolidone carboxylic acids, and salts.

Oblong teaches topical application of vitamin B3 compounds, but does not teach the potential benefits of increased penetration of B3 compounds *into* the skin. The reference further fails to teach a benefit resulting from the combined effects of B3 compounds, an NMF composition, and increased glyccrin, such as a more compact stratum corneum, increased penetration of the compounds, and long-term moisturization benefits.

Based on the foregoing, Applicants assert that the references fail to teach or suggest all the elements of the claimed invention and also fail to provide a suggestion or a motivation for one of skill in the art to combine the references. Therefore, the Office Action has failed to meet the criteria required to establish a *prima facie* case of obviousness.

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Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1 - 12 is respectfully requested.

Respectfully submitted,

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